

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAKAN CHAMEL MILLS,
Plaintiff,
v.
R. CUELLAR, et al.,
Defendants.

Case No. 1:20-cv-01247-NONE-EPG (PC)
ORDER RE: NOTICE OF E-SERVICE
WAIVER
(ECF No. 19)

Jakan Mills ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983.

On December 9, 2020, the Court received an Amended Notice of E-Service Waiver from the California Department of Corrections and Rehabilitation. (ECF No. 19). According to the waiver, defendant R. Diaz is deceased.

Given this representation, the Court will give Plaintiff thirty days to determine how to proceed as to defendant R. Diaz. Plaintiff may request that limited discovery be opened, so that he can identify Diaz's successor or representative and file a motion to substitute. Alternatively, if Plaintiff already has the necessary information, Plaintiff may file a motion to substitute Diaz's successor or representative in place of Diaz and provide the Court with the address for Diaz's successor or representative, so that the successor or representative can be served with the summons, complaint, and motion to substitute. Finally, Plaintiff may voluntarily dismiss

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1 Diaz from this lawsuit.¹

2 The Court notes that, pursuant to Federal Rule of Civil Procedure 25(a), the following
3 rules apply to a party who has died:

4 (1) *Substitution if the Claim Is Not Extinguished.* If a party dies and the claim is
5 not extinguished, the court may order substitution of the proper party. A
6 motion for substitution may be made by any party or by the decedent's
7 successor or representative. If the motion is not made within 90 days after
8 service of a statement noting the death, the action by or against the decedent
9 must be dismissed.

10 (2) *Continuation Among the Remaining Parties.* After a party's death, if the
11 right sought to be enforced survives only to or against the remaining parties,
12 the action does not abate, but proceeds in favor of or against the remaining
13 parties. The death should be noted on the record.

14 (3) *Service.* A motion to substitute, together with a notice of hearing, must be
15 served on the parties as provided in Rule 5 and on nonparties as provided in
16 Rule 4. A statement noting death must be served in the same manner.
17 Service may be made in any judicial district.

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28 ¹ The Court takes no position on the legal question of whether the legal claim against R. Diaz may be asserted against any other person.

1 Based on the foregoing, IT IS ORDERED that Plaintiff has thirty days from the date of
2 service of this order to either: a) File a motion to open limited discovery; b) File a motion to
3 substitute R. Diaz's successor or representative in place of R. Diaz and provide the Court with
4 the address for R. Diaz's successor or representative, so that the successor or representative can
5 be served with the summons, complaint, and motion to substitute; or c) Voluntarily dismiss R.
6 Diaz.

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8 IT IS SO ORDERED.

9 Dated: **December 15, 2020**

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE